IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.W.P. Nos: 981, 287, 284, 1175 and 924 of 2007

Judgment reserved on : 10.8.2007

Date of decision: 5th September, 2007

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1. **CWP No. 981 of 2007**
   Rakesh Kumar **Petitioner**

   Versus

   State of H.P. and others **Respondents**

   Mr. Ajay Sharma, counsel for the petitioner.

   Mr.M.S.Chandel, Advocate General with Mr. R.M.Bisht, Deputy Advocate General, for the respondents

2. **CWP No. 287 of 2007**
   Vishal Himachal Taxi Operators and ors

   ..Petitioners

   Versus

   State of H.P. and others **Respondents**

   Mr.Sandeep Kaushik, counsel for the petitioners.

   Mr.M.S.Chandel, Advocate General with Mr. R.M.Bisht, Deputy Advocate General, for the respondents

3. **CWP No. 284 of 2007**
   Dharamsala Taxi Operators **Petitioners**

   Versus

   State of H.P. and others **Respondents**

   Mr. Ajay Kumar, counsel for the petitioner.

   Mr.M.S.Chandel, Advocate General with Mr. R.M.Bisht, Deputy Advocate General, for the respondents

4. CWP No. 1175 of 2007
Satya Devi Petitioner

Versus

State of H.P. and others Respondents

Mr. Ajay Sharma, counsel for the petitioner.

Mr.M.S.Chandel, Advocate General with Mr. R.M.Bisht, Deputy Advocate General, for the respondents

5. CWP No. 924 of 2007
H.P.Tours & Travels Petitioner

Versus

State of H.P. and others Respondents

Mr. Ajay Sharma, counsel for the petitioner.

Mr.M.S.Chandel, Advocate General with Mr. R.M.Bisht, Deputy Advocate General, for the respondents

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The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr.S.S.Thakur, Judge.

Whether approved for reporting?[1]

Per Deepak Gupta, J.

By this order we are disposing of these connected writ petitions since they involve similar questions of law and facts.

The petitioners by means of these writ petitions have challenged the action of the State

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Government whereby the government has notified the Himachal Pradesh Meter Taxi Scheme, 2006 (hereinafter referred to as the Scheme). It would be pertinent to mention that in CWP No. 515 of 2006, titled as Trisha Sharma Vs. State of H.P., this court had passed an order on 13.10.2006 in the following terms:-

> "Reply has been filed by the respondents. In the reply amongst other things, the respondents have stated that the issue relating to the installation of taxi meters is under the consideration of the Government. We direct that this issue shall be effectively considered and finally resolved, in best public interest and compliance report submitted to this Court by the next date of hearing."

An affidavit was filed in the said writ petition that the scheme has been framed. In pursuance to the directions issued by this court, the respondents-State has notified the scheme. Clause 3 of the scheme makes it obligatory on the owners of all Moter Cabs/Maxi Cabs to have meters affixed on their vehicles unless they do not want to operate their vehicles in the area notified under Clause (1) (ii) of the scheme. Clauses which are relevant for our purpose read as follows:-

> "1(ii) It shall come into effect from such date and n such areas/town and within such radius of that area/town as may be notified by the State Government from time to time.
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> 2. x x x x x x x x x x x x x x x x x x x x x
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> 3. **Obligation for operation metered taxis**

All owners of existing motor cabs/maxi cabs who have been granted permits under relevant provisions of the Motor Vehicle Act, 1988 by the concerned Regional Transport authority/State Transport Authority in the area as has been notified by the State Government under clause 1(ii) of the Scheme shall from the commencement of the date as notified for a period of 3 years install meters on their motor vehicles and operate them as metered taxi on the fare as may be notified by the State Government.

Provided that if the owner of the motor cab/maxi cab does not wish to operate his vehicle as a metered taxi he shall give an undertaking in writing to the Regional Transport Authority/State Transport authority to the effect that he shall not operate his vehicle in the area as notified under clause 1(ii) of this scheme.

Provided further that owner of existing Motor cab/maxi cabs who are operating their vehicles in the area as notified under clause 1(ii) of the Scheme as metered taxi shall have the right to operate as contract carriage vehicles even outside the area for which the fare as metered taxi shall not be charged.

6. **Liability of the owner to install Meter**

The owner of the vehicle shall procure a digital electronic meter for installation on his vehicle from an agency or firm as authorized by the Commissioner in this behalf.

8. **Power to stop/check**

i) Any officer of the State Government authorized by general or special order, in this behalf, by the Commissioner, may require the driver of any motor fitted with meter to stop the motor vehicle and to cause it to remain stationary for so long as may be reasonably necessary for the purpose of satisfying himself that the meter affixed to the motor vehicle is in working condition and has not been tampered with or fare in accordance with the rates as prescribed are being charged.

ii) Any officer of the State Government authorized by general or special order, in this behalf, by the Commissioner, may require the driver of any motor vehicle (other than motor vehicle fixed with taxi meter) at any place to stop the motor vehicle and to cause it to remain stationary for so long as may be reasonable necessary for the purpose of ascertaining the reasons from the driver as to why the vehicle is operating in an area notified for operation of metered motor cabs/maxi cabs only."

The challenge to the scheme is basically on the following grounds:-

(i) That the State Government has no power to issue or formulate such a scheme ;

(ii) That even if the State Government has such a power then such power cannot be exercised in respect of tourist taxis which have been granted All India Permits within the meaning of Section 88 (9) of the Motor Vehicles Act (hereinafter referred to as the Act);

(iii) That neither the Act nor the rules envisage the fixing of meters on Maxi Cabs.

It is also contended that the scheme has not been properly framed and does not take into consideration the difficulties being faced by the taxi operators. It is also alleged that the scheme has been made applicable only in two towns of Shimla and Dharamsala and not in the entire State and as such is discriminatory, arbitrary and illegal.

Before referring to the various contentions of the parties, it would be pertinent to refer to certain provisions of the Act.

Section 2 (7) describes contract carriage as follows:-

> "2 (7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum-
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> (a) on a time basis, whether or not with reference to any route or distance; or
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> (b) from one point to another,
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> and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes-

(i) a maxicab; and

(ii) a motorcab notwithstanding that separate fares are charged for its passengers;"

This clearly shows that both, Maxi Cab and Motor Cabs fall within the wider definition of contract carriage. Maxi Cab has been defined in Section 2 (22) as follows:-

"2(22) "maxicab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;"

Motor Cab has been defined in Section 2 (25) in the following terms:

"2(25) "motorcab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;

Section 2 (31) defines permit in the following terms:-

2(31) "permit" means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorizing the use of a motor vehicle as a transport vehicle;

Section 74 of the Act deals with grant of contract carriage permit and Section 74 (2) (viii) reads as follows:-

"74(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this

Act, attach to the permit any one or more of the following conditions, namely:-

(i)-(vii) x x x x x x x x x x x x x x x x x

(viii) that, in the case of motorcabs, a taximeter shall be fitted and maintained in proper working order, if prescribed;

(ix)-(xiii) x x x x x x x x x x x x x x x x x x"

Section 88 of the Act deals with validation of permits for use outside the region in which the permit is granted. Normally the Regional Transport Authority (for short RTA) of any one region can grant permit which shall be valid only in that region and nowhere else. However, this section provides for certain circumstances and contingencies in which the permit granted by a RTO of one region is valid in another region. In the present case we are only concerned with Sections 88(9) and 88(11) which read as follows:-

"88(9) Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of sections 73, 74, 80, 81, 83, 84, 85, 86, [clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply in relation to such permits.

88(11) The following shall be conditions of every permit granted under sub-section (9), namely:-

(i) every motor vehicle in respect of which such permit is granted shall conform to such description, requirement regarding the seating capacity, standards of comforts, amenities and other matters, as the Central Government may specify in this behalf;

(ii) every such motor vehicle shall be driven by a person having such qualifications and satisfying such conditions as may be specified by the Central Government; and

(iii) such other conditions as may be prescribed by the Central Government."

It would be pertinent to mention that Rule 88 (14) also gives power to the Central Government to frame rules to carry out the provision of the section.

Section 96 empowers the State Government to make rules and this rule making power is in general terms. Section 96(2) (xx) which is relevant for our purpose reads as follows:-

"96(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:-

(i)-(xix) x x x x x x x x x x x x x x x x x x x"

(xx) the provision of taxi meters on motorcabs requiring approval or standard types of taxi meters to be used and examining testing and sealing taxi meters;"

(xxi)-(xxiii) x x x x x x x x x x x x x x x x x x x"

The Central Government has framed the Central Motor Vehicle Rules. In the present case we are concerned with Rule 82 which relates to tourist permit and reads as follows:-

> "82. **Tourist permits**.-(1) An application for the grant of permit in respect of a tourist vehicle (hereinafter referred to in these rules as a tourist permit) shall be made in Form 45 to the State Transport Authority.
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> (2) (a) A tourist permit shall be deemed to be invalid from the date on which the motor vehicle covered by the permit completes 9 years in the case of a motor cab and 8 years where the motor vehicle is other than a motor cab, unless the motor vehicle is replaced;
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> (b) Where a vehicle covered by a tourist permit is proposed to be replaced by another, the latter vehicle shall not be more than two years old on the date of such replacement."

Rule 83 prescribes the authorization fees to be charged for grant of tour permit in form 46. We are not concerned with Rule 85. Rule 85 (A) provides that the word tourist vehicle shall be painted on the vehicles which are granted tourist permits.

The State of Himachal Pradesh has framed the Himachal Pradesh Motor Vehicle Rules, 1999 (hereinafter referred to as the Rules). Rule 109 deals with taxi meters and reads as under:-

"**Rule 109. Taxi Meter**

(1) Every meter-cab shall be fitted with a taxi meter of a pattern approved by the State Transport Authority and shall be in conformity with any instructions that may be issued by the State Transport Authority.

(2) A permit holder required to fit a taxi meter shall, at the time of production of his vehicle for inspection before the Board of Inspection, furnish a certificate issued by the Controller, Weights and Measures, Himachal Pradesh, or any officer authorized by him in this behalf, to the effect that the taxi meter has been tested and sealed and shall produce the taxi meter for an examination subsequently whenever the vehicle to which it is attached is inspected or whenever for any reasons it has become necessary to break the seal."

From a bare perusal of Section 74(2) (viii), it is clear that the RTA who grants the contract carriage permit in the case of a Motor Cab has the right to attach condition in the permit that a taxi meter shall be fitted on the Motor Cab. Section 96(2) (xx) clearly empowers the State Government to frame Rules providing for taxi meters on Motor Cabs. Therefore, the State definitely had the power to frame the scheme. The first contention of the petitioner is, therefore, without any force and is rejected.

Mr. Ajay Sharma, learned counsel for the petitioner, has strenuously contended that a tourist vehicle which has been granted an All India Permit or a

Zonal Permit for at least 3 other States in terms of Section 88(9), no longer falls within the purview and domain of the State Government and the State Government has no power to frame rules or to lay down any conditions in respect of such tourist vehicles. He has relied upon the provisions of Section 88 (11) which provides that the Central Government may specify the conditions and qualifications for grant of such permit. Similarly, Section 88(14) (a) empowers the Central Government to make rules for carrying out provision of the section. On the basis of these provisions, it is contended that the State Government has no power to direct that the taxi meters should be affixed on Motor Cabs which have been granted permits under Section 88(9).

Mr. Ajay Sharma, learned counsel for the petitioner, has relied upon a judgment of the Supreme Court in **State of A.P. and others Vs. B.Noorulla Khan and another** (**2004) 6 SCC 194** wherein the Apex Court held as follows:-

> "22. It is clear from the reading of this provision that the State Transport Authority has been empowered to grant all-India tourist permit for the purpose of promoting tourism, notwithstanding anything contained in sub-section (1) of Section 88 and subject to the rules to be made by the Central Government under sub-section (14) of Section 88, for the whole of India or such contiguous States not less than three in number including the State in

which the p ermit is issued. Further, the provisions of Sections 73, 74, 80, 81, 82, 83, 84, 85, 86, clause (d) of sub-section (1) of Section 87 and Section 89 are applicable as far as may be, in relation to such permits.

Thereafter the Apex Court has quoted the provisions of sub section 11 and sub section 14 and held as follows:-

> "This sub-section empowers the Central Government to frame rules for carrying out the provisions of this section as well as for providing for all or any of the matters mentioned in clause (b) of this section. From the conjoint reading of sub-sections (9), (11) and (14), referred to above, it is abundantly clear that it is the Central Government alone which has been authorized to frame the rules as well as to prescribe the conditions for the purposes of all-India tourist vehicles. The power to make rules under Sections 95 and 96 would not include the power to frame rules applicable to all-India tourist permit which is exclusively vested in the Central Government. The power to frame rules and prescribe conditions for the all-India tourist permit is exclusively vested in the Central Government and the High Court was right in holding that the State Government would have no jurisdiction to either frame the rules or prescribe conditions for the all-India tourist permits. Such permits would be exclusively governed by the rules framed by the Central Government or the conditions prescribed by the Central Government. The judgment of the High Court insofar as it has held that it is the rules framed by the Central

Government only which would be applicable to all-India tourist permits and not the rules framed by the State Government, is upheld."

In the light of the aforesaid judgment of the Apex Court the argument raised by the learned counsel for the petitioner on first blush seems to be attractive. However, on closer scrutiny of Section 88 of the Act, it is apparent that it only empowers the Central Government to make the rules for carrying out the provision of Section 88 and does not cover the other sections of the Act. It may be true that the State Government is not empowered to frame rules with regard to the matters covered under Section 88 of the Act. However, the provision of Section 88 do not take away the right of the State Government to frame other rules of general import which it is empowered to frame under Sections 95 and 96 of the Act.

Further more, in the present case we are of the considered view that the State Government has not in any way impinged upon the powers of the Central Government. The scheme framed by the State Government cannot be said to be ultra vires. An examination of the scheme, especially rule 3 which makes it obligatory to have meters, makes it clear that meters are compulsory only if a person wants to run the taxi in the area notified by the State Government under Clause (1) (ii) of the scheme. Obviously this area has to

be within the State of H.P. and not outside the State of H.P. An option has been given to the owners of the Motor Cabs/Maxi Cabs that if they do not wish to operate their vehicles as meter taxis, they must give an undertaking to the effect that they will not operate their vehicles in the area notified under Clause (1) (ii) of the scheme. It is clear from the reading of Clause (3) that the State Government has not in any way affected or hampered the rights of the permit holders who have been granted permits under Section 88 (9) of the Act. They are free to run their taxis as tourist vehicles on All India basis or Zonal basis as per the permits granted to them. If operators owning these taxis want to ply their vehicles in these areas, there is no necessity to affix the meters.

An apprehension has been expressed by the taxi operators that in case they do not affix meters, they cannot even drop passengers within the notified area nor can they pick up passengers from within the notified area. This apprehension is totally misconceived. In fact this court in CWP No. 287 of 2007 had passed a detailed order dispelling these apprehensions. We would like to make it clear that the scheme, as envisaged and proposed, is applicable only if the passengers have to be both picked up and dropped within the same notified area. For example, in the area of Shimla if a person has to be picked up from bus stand and dropped in the suburbs

within the limits of 40 k.m. then this can only be done by a metered taxi. Similarly, a person can be taken from one suburb to another within the same notified area only by a metered taxi. Both, the picking up and dropping up of the passengers must be within the same notified area to attract the provisions of the scheme. In cases where the passengers are picked up from outside the notified area or are dropped outside the notified area, the scheme shall not be applicable. We would also like to make it clear that as far as the non-metered Motor Cabs are concerned, they are free to take passengers from one point to another within the State of Himachal Pradesh as long as both the starting points and the destination do not fall within the same notified area. However, non metered Motor Cabs bringing passengers from outside the notified area can only drop the passengers in the notified area and cannot take these passengers for local sight seeing within the notified area.

On the other hand, in the case of a metered taxi, the same can operate both within and outside the notified area all over the State of Himachal Pradesh. Therefore, a metered taxi belonging to Shimla will have the right to run on the basis of a meter within the notified area of Dharamsala. The metered taxi has a right to run both, within the notified area as well as outside the metered area. While hiring a taxi for journey which can be

performed by a non metered taxi, the customer will have the option and choice of either hiring a metered taxi or a non metered taxi. He can choose whichever option is more suitable to him.

We have already ordered in CWP No. 287 of 2006 that the only exception will be to the All India Tourist Permit taxis registered and coming from outside the State of H.P. Since these taxis have been hired by tourists from outside the State of Himachal Pradesh and they originate from outside Himachal Pradesh, they can even take their passengers for local sight seeing within the notified area. However, these passengers must be the same passengers who have come by the taxi from outside the State of Himachal Pradesh. Even these taxis cannot pick up any other passengers from within the notified areas for local sight seeing.

Another apprehension expressed is that the scheme will only apply to those taxis whose owners reside within the notified areas. This apprehension is also totally misconceived. The scheme applies to Motor Cabs and not to owners. As has been made clear only a Motor Cab with a meter will be entitled to pick up and drop passengers within a particular notified area. This is regardless of the fact whether the taxi is registered within the notified area or not. To clarify even if a taxi is registered at Bilaspur which at present is not a notified

area, it does not mean that the owner of such taxi can both pick up and drop passengers within notified area of Shimla. The taxi operator of such a taxi can bring customers from outside the notified area and drop them within the notified area. He can also pick up customers from within the notified area for a journey ending outside the same notified area. However, he cannot pick up the customers and drop them within the same notified area.

Another contention raised on behalf of the petitioner is that the State has no power to order the affixation of meters on Maxi Cabs. We are in agreement with this contention. Both, Sections 74(2) (viii) and 96(2) (xx) only empower the RTA or the State Government to lay down conditions for fixing of meters on Motor Cabs. Motor Cabs and Maxi Cabs have been defined differently. Maxi Cabs are not Motor Cabs. As the law stand today, the State Government has no jurisdiction whatsoever to frame any rules ordering the fixation of meters on Maxi Cabs.

On behalf of the State it has been urged that Rule 109 only talks about Meter Cabs and not about Maxi Cabs or Motor Cabs. We are not impressed with this argument. The power to frame the rule is derived from the Act and the rule making power is contained in Section 96(2) (xx) which only empowers the State Government to frame rules for the provision of Taxi meters on Motor

Cabs. It may be true that in view of the increasing number of Maxi Cabs being used, it will be in the larger consumer interest to have meters affixed on the Maxi Cabs also. However, this can only be done after the legislature amends the Act. As the law stands today, the State Government has no power to frame such rules in respect of Maxi Cabs. It is, therefore, held that the scheme shall not apply to Maxi Cabs.

Mr. Ajay Sharma, learned counsel for the petitioner, has contended that the distance of 40 k.m. laid down while fixing the notified area is too high. He further submits that the fare structure is very low. These contentions have been countered by the State. We cannot go into these questions and it would be more appropriate for the petitioners and the State Government to sit together and iron out the creases in the scheme. Any scheme when it is initially framed may suffer from certain deficiencies. These can be pointed out and we do hope and expect that the State shall act in a positive manner and accept the genuine complaints and redress the genuine grievances of the taxi operators.

However, we are also clearly of the view that there is a dire need to extend the scope of the scheme to other areas of the State. We, by our order, dated 26th April, 2007 had directed the State Government to extend the scheme to Kullu and Manali latest by 31st May, 2007.

We are of the considered view that the State Government should review this matter on a regular basis and it should come out with a comprehensive time schedule and plan to ensure that metered taxis are run in all the major towns and urban areas of Himachal Pradesh. We would like to point out that it is not necessary that in every town the notified area should be of the radius of 40 k.m. Smaller radius can be provided in smaller towns, and in the bigger towns and especially the towns where there are large number of places of tourist interest the radius may be 40 k.m. or even higher. This will depend on the facts of each case. The right of the consumers to travel by metered taxi is a very valuable right which should not be thwarted on technical grounds.

In view of the above discussion we dispose of the writ petitions by holding that the Scheme framed by the State Government is valid insofar as it relates to Motor Cabs only. The scheme, however, shall not apply to Maxi Cabs. The State Government is further directed to ensure that the Scheme is applied with full vigour to protect the rights of the consumers and that the scheme is extended to the other urban areas of Himachal Pradesh as early as possible and in any event not later than 31st December, 2008. No order as to costs.

(Deepak Gupta), J.

September 5, 2007(K) (Surinder Singh), J.